

Court No. - 64

Case :- APPLICATION U/S 482 No. - 24661 of 2024

Applicant :- Naseem Ahmad And Another

Opposite Party :- C.B.I. And Another

Counsel for Applicant :- Indra Bhan Yadav,Panchraj

Counsel for Opposite Party :- G.A.,Sanjay Kumar Yadav

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anoop Trivedi, the learned Senior Counsel assisted by Mr. Indra Bhan Yadav, the learned counsel for applicants, Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned counsel representing C.B.I.-opposite party-1 and the learned A.G.A. for State-opposite party-2.

2. Perused the record.

3. Applicants have approached this Court by means of present application under Section 482 CrPC with the following prayer :

"It is therefore most respectfully prayed that the Hon'ble Court may be pleased to allow the present application and quash impugned order dated 22.3.2024 passed by the Special Judge (Anti-Corruption) C.B.I., Court No.2, Ghaziabad as well as entire proceeding of Criminal Misc. Case No.01 of 2023 (C.B.I. Vs. Ajay Kumar Singh and others) arising out of RC-6 (A)/2019/CBI/SC-III/New Delhi, Final Report No.37/2022 (dated 31.12.2022) under Sections 120-B, 420 I.P.C. and Section 13 (2) r/w 13 (1)(b) of the Prevention of Corruption Act, 1988 (prior to the amendment dated 27.7.2018), police station CBI/SC-III/New Delhi;

It is further be pleased to stay the further proceeding of

Criminal Misc. Case No.01 of 2023 (C.B.I. Vs. Ajay Kumar Singh and others) arising out of RC-6 (A)/2019/CBI/SC-III/New Delhi, Final Report No.37/2022 (dated 31.12.2022) under Sections 120-B, 420 I.P.C. and Section 13 (2) r/w 13 (1) (b) of the Prevention of Corruption Act, 1988 (prior to the amendment dated 27.7.2018), police station CBI/SC-III/New Delhi during the pendency of instant case before this Hon'ble Court, otherwise the applicants shall suffer irreparable loss and injury."

4. It transpires from record that initially a preliminary enquiry was conducted by one Mr. K.P. Sharma, Deputy Superintendent of Police, CBI, New Delhi. On the basis of findings returned in the aforesaid enquiry report, a first information report dated 30.09.2019 came to be lodged by first informant-K.P. Sharma, Deputy Superintendent of Police, CBI, New Delhi and was registered as Case Crime No. RC-6 (A) 2019/SC-III/ND, under Sections 120-B, 420 I.P.C. and Section 13 (2) read with Section 13 (1)(b) of the Prevention of Corruption Act, 1988, police station CBI/SC-III/ND, district New Delhi. In the aforesaid FIR, 12 persons, namely (1). Ajay Kumar Singh, the then District Magistrate, Saharanpur, U.P., (2). Pawan Kumar, the then District Magistrate, Saharanpur, U.P., (3) Mehmood Ali Son of Late Abdul Wahid R/o Village & P.S. Mirzapur Pole, Tehsil-Behat, District-Saharanpur, U.P., (4) Dilshad Son of Late Maqsood, R/o Village & P.S. Mirzapur Police, Tehsil-Behat, District-Saharanpur, U.P., (5). Mohd. Inam Son of Late Abdul Wahid, R/o Village & P.S. Mirzapur Pole, Tehsil-Behat, District-Saharanpur, U.P., (6). Mehboob Alam (since expired), (7). Naseem Ahmad Son of Late Abdul Gafoor, R/o Village & P.S. Mirzapur Pole, Tehsil-Behat, District-Saharanpur, U.P., (8). Amit Jain Son of Late Narendra

Kumar Jain, R/o 66, Mahavir Colony, Chikana Road, Saharanpur, U.P., (9). Vikas Agarwal Son of Late Nagar Singh, R/o 12/10, Ashirwad Enclave, Chakrata Road, Dehradun, Uttarakhand and (10). Mohd. Wajid Son of Haji Mohd. Iqbal, R/o Village & P.S. Mirzapur Pole, Tehsil-Behat, District-Saharanpur, U.P., have been nominated as named accuseds, whereas unknown public servants and other unknown persons have also been arraigned as accused.

5. After aforementioned first information report was lodged, Investigating Officer (C.B.I.) proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. On the basis of material collected by the Investigating Officer during course of investigation, he came to the conclusion that no offence as complained off is made out against any of the named accused or not-named accused. Accordingly, CBI submitted its closure report (Final Report No.37 of 2022) dated 31.12.2022 i.e. police report in terms of Section 173 (2) CrPC.

6. Upon submission of aforementioned police report, the concerned Special Judge proceeded to consider the same in exercise of his jurisdiction under Section 190 (1)(b) CrPC. Upon appraisal and appreciation of the material accompanying the police report, the court concerned came to the conclusion that the aforesaid police report is not liable to be accepted. Accordingly, the court concerned i.e. Special Judge (Anti Corruption) C.B.I., Court No.2, Ghaziabad, vide order dated 22.03.2024, did not accept the aforementioned police report (closure report) and took cognizance upon same in exercise of it's jurisdiction under Section 190 (1)(b) CrPC. Accordingly, applicants who are named in the first information report but not charge-sheeted accused have now been summoned by Court concerned to face trial in aforementioned case crime number.

7. As a result, feeling aggrieved by the above order dated 22.03.2024, applicants have now approached this Court by means of present application under Section 482 Cr.P.C.

8. In order to appreciate the submissions urged by the learned Senior Counsel in support of present application under Section 482 Cr.P.C., it is necessary to summarize the background facts as have emerged from the record.

9. Record shows that pursuant to the order dated 28.07.2016 passed by the Allahabad High Court in C.M.W.P. (PIL) No. 22482 of 2016 (Amar Singh Vs. State of U.P. and Others), C.M.W.P. (PIL) No. 29115 of 2016 (Sonu Kumar Vs. State of U.P. and Others) and order dated 08.08.2016 passed in C.M.W.P. No. 818 of 2015 (Ranveer Singh Vs. Union of India), an enquiry regarding illegal renewal of sand mining leases in District-Saharanpur was conducted by Mr. K.P. Sharma, the then Deputy Superintendent of Police, CBI.

10. During course of enquiry, some of the facts, which came to be crystallized are mentioned herein below.

11. 42 sand mining leases were granted by the then Incharge District Magistrate, Saharanpur namely Karan Singh Chauhan. Out of the total 42 sand mining leases so granted, 40 sand mining lease deeds were executed on 04/05.04.2006.

12. However, 15 out of 40 sand mining lease deeds so executed came to be challenged before this Court and this Court, vide order dated 22.12.2006, directed the District Magistrate, Saharanpur to re-decide the grant of 15 sand mining leases after considering the applications of the petitioners and co-applicants.

13. Above order dated 22.12.2006 was challenged before the Supreme Court but ultimately, the said SLP was withdrawn by the

appellant in the year, 2008.

14. On account of above, the then District Magistrate, Alok Kumar re-granted sand mining lease bearing lot nos. 1, 4, 5, 12, 13, 17, 18, 21, 27, 29, 36, 37 and 40 out of the 15 mining leases, which were disputed before this Court. The names of the allottees is as under:- (i). Mehmood Ali, (ii). Dilshad (applicant herein), (iii). Mohd. Inam, (iv). Mehboob Alam (since expired), (v). Naseem Ahmad (applicant herein), (vi). Amit Jain, (vii). Vikas Agarwal, (viii). Mohd. Wajid, (ix). Mukesh Jain and (x). Puneet Jain.

15. Thereafter, the subsequent District Magistrate, Saharanpur namely Chob Singh Verma recommended the grant of first renewal of aforementioned 13 mining leases granted on 23.05.2008 to the State Government for it's approval.

16. Aforementioned recommendation regarding first renewal of 13 mining leases detailed in the preceding paragraphs was accorded by Indrajeet Saroj, the then Mining Minister in the State of U.P. and communication to that effect was sent by State Government to the District Magistrate, Saharanpur, vide letter dated 13.05.2011.

17. In compliance of above communication/letter dated 13.05.2011, the then District Magistrate, Saharanpur namely Chob Singh Verma passed orders regarding renewal of aforementioned 13 mining leases with the stipulation that further action shall be taken only after the lease holders have obtained environmental certificates.

18. Subsequently, the State Government, vide G.O. dated 31.05.2012 canceled the previous Government Orders pertaining to grant/renewal of sand mining leases under Chapter-II of U.P. Minor Minerals Concession Rules, 1963. It was now provided that fresh mining lease shall be granted only by way of an e-tender.

19. However, the then District Magistrate, Saharanpur renewed the existing mining leases and renewed 13 sand mining leases out of the lot of 15 sand mining leases referred to above in between August-November, 2012 for a period of three years.

20. The State Government issued the Government Order dated 22.10.2014 under Sub-Rule (1) of Rule 23 of U.P. Minor Minerals (Concessions) Rules, 1963, whereby the earlier Government Order No. 1277/86/2012-278/2011, dated 31.05.2012 and subsequent Government Order No. 382(1)/86-2013-278/2011, dated 26.02.2013, Government Order No. 1710/86-2014-278/2011, dated 09.06.2014 and Government Order No. 1710(1)/86-2014-278/2011, dated 08.07.2014, were withdrawn with immediate effect.

21. The effect of the same was that all arrangements relating to grant of mining lease by e-tendering process stood cancelled.

22. The Government Order dated 22.10.2014 issued by the State Government was challenged before this Court in a bunch of writ petitions. The leading writ petition was Civil Misc. Writ Petition No.1498 of 2015 (Gulab Chandra Mishra Vs. State of U.P. and others). The Bench upheld the validity of the Government Order dated 22.10.2014, vide order dated 03.04.2015. However, the Bench observed that no mining lease under the notification dated 22.10.2014 shall be executed by the State Government, unless there is an approved mining plan complete in all respect, as contemplated under Model Rules, 2010.

23. It is apposite to mention here that no interim order was passed by this Court in aforementioned writ petition. The result of same was that Government Order dated 22.10.2014 continued to operate in the field.

24. Against order dated 03.04.2015 passed by this Court, Special Leave to Appeal (C) No.14578 of 2015 was preferred before Apex Court. The Apex Court, vide order dated 22.11.2016, remanded the matter to this Court and directed the parties to maintain status-quo. As such, the legal effect of the same is that the Government Order dated 22.10.2014 came to operate in the field regarding grant of renewal of mining lease under the U.P. Minor Minerals (Concession) Rules, 1963.

25. Subsequently, the State Government issued the Government Order dated 16.04.2015, whereby it was made clear that the earlier scheme enforced regarding grant of mining lease, vide Government Order dated 22.10.2014 issued under Rule 24 of U.P. Minor Minerals (Concession) Rules, 1963 and the mandate incorporated under Sub-Rule (1) of Rule 23 of the aforesaid Rules stands withdrawn and the provisions of Chapter 2, 3 and 6 of U.P. Minor Minerals (Concession) Rules, 1963 stand restored.

26. As a consequence of aforementioned Government Order dated 16.04.2015, the e-tendering process, which was initiated earlier stood cancelled and now renewal of mining lease earlier granted could be done.

27. The State Government, vide 38th amendment in U.P. Minor Minerals (Concession) Rules, 1963 dated 14.07.2015, made an amendment in Rule-8 of U.P. Minor Minerals (Concession) Rules, 1963, whereby provision for second renewal of mining lease, where minor minerals are found in mixed state but exclusively in the river bed can be granted but the period of renewal shall not exceed the period prescribed in the earlier mining lease.

28. One Pawan Kumar took charge as District Magistrate, Saharanpur on 21.07.2015 and worked as such from 21.07.2015 to

08.08.2016.

29. The State Government, vide its letter dated 05.08.2015 issued by Mr. Genda Lal, Joint Secretary, Government of U.P. sought information from the District Magistrate, Saharanpur with regard to mining lease holders in District Saharanpur. A reminder in continuation of above was issued on 14.09.2015.

30. In compliance of aforesaid communications dated 05.08.2015 and 14.09.2015 sent by the State Government, the then District Magistrate, Saharanpur namely Pawan Kumar sought information regarding each of the mining lease holder from the then Mines Officer, Mr. Raj Kumar Sangam, Mining Clerk, Mr. Afzal Ahmad, SDM, Behat, Additional District Magistrate (Finance & Revenue), Mr. Syed Nizamuddin and Senior Superintendent of Police, Saharanpur.

31. Having received the required information, Mr. Pawan Kumar, the then District Magistrate, Saharanpur sent the same to the State Government i.e. Joint Secretary, Government of U.P., Lucknow by his letter dated 01.09.2015 annexing along with the same, the reports of concerned officials.

32. Subsequently, another letter dated 08.10.2015 addressed to the State Government i.e. Joint Secretary, Government of U.P., Lucknow regarding renewal of 35 mining leases was sent by the then District Magistrate, Saharanpur.

33. In response to aforementioned communications sent by the then District Magistrate, Saharanpur namely Pawan Kumar to the State Government, the Joint Secretary, Government of U.P., Lucknow, vide his communication dated 23.11.2015 accorded approval regarding the second renewal of mining lease for a period of three years from the end of the first renewal in terms of Rule 8

of U.P. Minor Mineral (Concessions) Rules, 1963. In this letter, the names of the mining lease holders in whose favour, the second renewal was to be granted was also mentioned.

34. In compliance of aforementioned communication dated 23.11.2015 issued by the State Government, an office order dated 07.12.2015 was issued by the office of District Magistrate, Saharanpur, whereby a general order regarding grant of second renewal of mining lease executed in favour of lease holders was issued. It is apposite to mention here that the communication dated 23.11.2015 issued by the State Government was quoted ad-verbatim in the aforesaid office order.

35. However, subsequent to aforementioned office order dated 07.12.2015 issued by Mr. Pawan Kumar as District Magistrate, Saharanpur, the consequential lease deed upon second renewal was not executed. As such, none of the mining lease holders came in possession of second renewal of their existing sand mining lease.

36. As per the conclusion drawn in the preliminary enquiry, it is alleged that the then District Magistrate, Saharanpur Pawan Kumar, in criminal conspiracy with the above mentioned 13 sand mining lease holders recommended for the second renewal of the sand mining leases to the State Government, vide his letter dated 08.10.2015.

37. At this juncture, C.M.W.P. (PIL) No. 60922 of 2015 (Pradeep Kumar Vs. State of U.P.). came to be filed before this Court, wherein this Court passed an interim order dated 15.12.2022, whereby renewal of existing mining lease in favour of the private respondents in aforementioned PIL was restrained by this Court.

38. Another Writ Petition i.e. C.M.W.P. (PIL) No. 18769 of 2017 (All India Kaimoor Peoples Front Vs. State of U.P. and 6 Others) was filed before this Court. In the aforesaid petition, an interim

order dated 12.05.2017 was passed directing therein that private respondents shall not carry out any mining operations on the basis of lease agreements/deeds executed in their favour. A further direction was issued to the District Magistrate concerned to ensure that the private respondents are stopped from undertaking mining operations forthwith.

39. However, subsequently, another Division Bench of this Court, vide order dated 07.03.2019, vacated aforementioned interim order dated 12.05.2017. The effect of same was that private respondents were allowed to go ahead with the mining operations pursuant to the lease granted in their favour.

40. On the aforesaid factual premise, it is urged by Mr. Anoop Trivedi, the learned Senior Counsel for applicants that no offence as alleged in the FIR dated 30.09.2019 is made out against applicants. The applicants have neither conspired in the commission of the crime in question nor they are the beneficiaries of any criminal act of any of the named accused. It is an undisputed fact that only an order was passed by the then District Magistrate, Saharanpur namely Pawan Kumar, whereby a general direction was issued that second renewal of existing mining lease shall be granted. The said general order was based upon the decision taken by the State Government, whereby the State Government had accorded its approval regarding second renewal of the mining lease already executed in favour of the mining lease holders. However, the actual execution of the second mining lease never came into existence on account of the fact that the formalities required could not be completed and further on account of an interim order passed by this Court in the PIL petitions preferred before this Court. However, the Court below by drawing an erroneous assumption to the contrary has held otherwise, which

is illegal. Reference in this regard was made to paragraph 16 of the affidavit filed in support of present application.

41. It is then contended that no offence under Section 420 IPC can be said to be made out against applicants inasmuch as, the applicants are not guilty of forging any document or valuable security. It is not the case of the State of U.P. that it has been cheated on account of act of present applicants. According to the learned senior counsel, in an offence under Section 420 IPC, one party is the beneficiary, whereas the other party is the affected party as it stands cheated. However, in the present case, no complaint has come forward from any person including the State of U.P. that it stands cheated on account of the act of applicants.

42. On the aforesaid conspectus, as have emerged on record, it is vehemently urged by the learned senior counsel that no offence under Section 120-B IPC can be said to be made out against applicants. In the submission of the learned senior counsel, conspiracy is a closed door affair and is subject to trial evidence. However, an exception to this Rule exists as conspiracy can be inferred from the circumstances inasmuch as, there can hardly be direct evidence regarding conspiracy. However, according to the learned senior counsel as per the facts on record that have emerged in the material collected by Investigating Officer during course of investigation and no inference of conspiracy can be drawn against applicants. To concludes, he submits that since the actual execution of the mining lease never came into existence, therefore, no conspiracy can be attached to the applicants.

43. It is further submitted by the learned senior counsel that against the same impugned order Criminal Misc. Application U/s 482 Cr.P.C. No. 21070 of 2024 (Pawan Kumar Vs. CBI) was filed by one of the named accused challenging the same impugned order

inasmuch as, the Court below directed the CBI to ensure that sanction qua the criminal prosecution of aforesaid accused is granted by the competent authority in terms of Section 19 of the Prevention of Corruption Act and thereafter, placed before Court.

44. On the edifice of aforesaid factual foundation, the learned senior counsel thus submits that there was no such material in the papers accompanying the police report on the basis of which, it can be inferred that there is some evidence against the applicants in respect of an offence under Sections 420 and 120-B IPC. However, irrespective of above, the Court below, in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. in a cryptic manner has disapproved the police report (closure report dated 31.12.2022) submitted in terms of Section 173(2) Cr.P.C. Place reliance upon the judgment of Supreme Court in **R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866**, it is urged by the learned senior counsel for applicants that since present case is a case of no evidence, therefore, the order impugned is liable to be set aside by this Court.

45. It is lastly contended that the Court below, while passing the impugned order has failed to exercise the jurisdiction vested in it diligently. To the contrary, the Court below in a casual and cavalier fashion has disapproved the closure report by drawing erroneous assumptions and has passed the impugned order without looking into the papers accompanying the police report, which it was otherwise obliged to look into by virtue of the law laid down by the Apex Court in **Sanjay Kumar Rai Vs. State of U.P. and Another, (2022) 15 SCC 720**.

46. On the cumulative strength of above, the learned senior counsel thus submits that order impugned in present application under Section 482 Cr.P.C. is not only illegal, unjust but also

arbitrary. Consequently, the same cannot be sustained in law and fact and therefore, liable to be set aside by this Court.

47. Per contra, Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned counsel representing C.B.I.-opposite party-1 submits that the CBI upon due and proper investigation of the matter had submitted the closure report. During course of investigation, no such material was gathered by the CBI on the basis of which, even an inference regarding the guilt of applicants could be inferred. He, therefore, submits that he be granted time to file counter affidavit to the present application.

48. Learned A.G.A. representing State-opposite party-2 could not dislodge the submissions urged by the learned senior counsel with reference to the record at this stage.

49. Having heard Mr. Anoop Trivedi, learned Senior Advocate for applicants, the learned A.G.A. for State-opposite party 2 and Mr. Gyan Prakash Srivastava, learned Deputy Solicitor General of India, the learned counsel representing C.B.I.-opposite party 1, upon perusal of record and considering the submissions urged by the learned Senior Advocate in support of this application as noted herein-above, the matter requires consideration.

50. Notice on behalf of C.B.I.-opposite party 1 has been accepted by Mr. Sanjay Kumar Yadav. Learned A.G.A. has accepted notice on behalf of State-opposite party 2.

51. All the opposite parties may file their respective counter affidavits within four weeks. Applicants will have two weeks thereafter to file rejoinder affidavit.

52. Connect Criminal Misc. Application U/s 482 Cr.P.C. No. 21070 of 2024 (Pawan Kumar Vs. CBI) along with this

application.

53. List this application along with connected matter after expiry of aforesaid period.

54. Having heard Mr. Anoop Trivedi, the learned senior counsel for applicants, Mr. Gyan Prakash Srivastava, the learned Deputy Solicitor General of India assisted by Mr. Sanjay Kumar Yadav, the learned counsel representing C.B.I.-opposite party-1 and the learned A.G.A. for State-opposite party-2, upon perusal of record and considering the rival submissions urged by the counsel for the parties and the facts of present case as noted herein above and also the law laid down by Apex Court in Five Judges Bench judgments of Apex Court in High Court ***High Court Bar Association, Allahabad Vs. 2024 SCC OnLine SC 207*** and ***Asian Resurfacing of Road Agency Pvt. Ltd Vs. C.B.I., 2022 SCC OnLine SC 1014***, as an interim measure, it is provided that until further orders, further proceedings of Criminal Misc. Case No.01 of 2023 (C.B.I. Vs. Ajay Kumar Singh and others) arising out of RC-6 (A)/2019/CBI/SC-III/New Delhi Final Report No.37/2022 (dated 31.12.2022) under Sections 120-B, 420 I.P.C. and Section 13 (2) r/w 13 (1)(b) of the Prevention of Corruption Act, 1988, pending in the Court of Special Judge (Anti Corruption), CBI Court No.-2, Ghaziabad shall remain stayed.

Order Date :- 31.7.2024

Rks.